IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1472 OF 2005

R.S.Lahoti .. Appellant

Versus

R.L.Date .. Respondent

Ms.Smita Gaidhani for appellant

Mr.Prashant Patil for respondent Nos.1, 2(b) to 3(g)

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1st August 2007.

P.C.

. Heard learned Counsel for parties. Perused the judgement rendered by the courts

below. The lower appellate court has rightly stepped in to reverse the decree of the trial court. The trial court has dismissed the suit despite holding that the agreement for sale dated 22nd August 1957 is not vitiated either by fraud practised by the plaintiff on deceased Ramkisan or otherwise. It has held that it has not been cancelled also. The suit was decreed by the lower appellate court after observing that when findings on issue Nos. 1 to 4 have been rendered in favour of the plaintiff, the suit could not have been dismissed. While reversing the decree of the trial court, the lower appellate court, has applied its mind to the materials placed on record. It has applied the settled principles inasmuch as when no time was fixed for performance of the agreement, the suit being filed after the refusal by heirs of vendor, the claim was within limitation. Secondly, the agreement is not rendered unenforceable merely because the permission from competent authority

would be needed. The well settled legal principle that an agreement for sale could be specifically enforced and a decree passed for specific performance, subject to permission from competent authority, has rightly been applied in the facts and circumstances of this case.

2. There is no substantial question of law raised. This is not a court of further appeal so as to permit it to re-appreciate and re-appraise the material, documents and evidence on record. The second appeal is accordingly dismissed. C.A. if any is dismissed as infructuous. No costs. Interim orders to stand vacated.

(S.C.DHARMADHIKARI, J)